

1987

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

HALLIE C. ORMOND,  
CC. GRISHAM, and  
MARY F. BURKE

DEFENDANTS.

CIVIL ACTION NO.  
87-3034

AFFIDAVIT

STATE OF TEXAS

COUNTY OF TEXAS

Before me the undersigned Notary Public, on this day appeared Ruth Izraeli, who is personally known to me, and being duly sworn upon her oath deposed and said as follows:

"I, Ruth Izraeli, being of sound mind and over the age of eighteen (18) years do state the following:

"I am employed as an Environmental Scientist in the Enforcement Section of the Superfund Enforcement Branch of the United States Environmental Protection Agency (EPA), Region VI in Dallas, Texas.

"I am the EPA Project Manager assigned the task of overseeing the conduct of all remedial investigations related to the Arkwood Site. In my capacity as project manager, I have become familiar with all relevant works, studies and investigations undertaken by EPA, or at the direction of EPA, and

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with relevant studies and investigations performed by other parties concerning the placement of hazardous wastes at the Arkwood Site. Based on my knowledge and belief gained from the evaluation of this information, I believe that the following statements are true and accurate:"

"The Arkwood Site is an abandoned wood preserving site comprising approximately 20 acres adjacent to the Missouri Pacific Cricket railroad and south of Omaha in Boone County, Arkansas. The site was operated as a commercial wood preserving facility from the early 1960s until 1984. Both pentachlorophenol (PCP) and creosote were utilized as wood preservatives. These chemicals were mixed with road oil or diesel fuel before application to the wood products.

"During the operation of the wood-treating facility, process wastes were disposed of at the site in several ways. Some wastes were disposed of by dumping them into an on-site sinkhole (or sinkholes) (a depression formed by the dissolution of rock underlying the site resulting in an underground cavern and collapse of the surface into the cavern) and a ditch adjacent to the railroad. Oily waste water resulting from washing the treatment area was spread over the site for dust control. Waste wood preservatives dripped off of the treated wood products and contaminated the drip tracks adjacent to the treatment area as well as the wood storage area. Wastes were also burned on-site and disposed of in what is now an ash pile. The approximate locations of these waste areas are indicated on the site map attached as Exhibit 1.

"Samples of fluids contained in the on-site sinkhole and the railroad ditch disposal area taken on June 4, 1985 by IT Corporation were reported

to contain concentrations of PCP of 16,000 to 50,000 parts per million (ppm). Also reported in these samples were high concentrations of various polynuclear aromatic hydrocarbons (PAH's - these chemicals are the major constituents of creosote) such as naphthalene, fluorene and arenaphthene. Samples collected from the sinkhole were also reported to contain high concentrations of benzene and toluene. Samples of soil in the storage yard collected by McKesson Environmental Services on May 21, 1985 were reported to contain a concentration of 8,200 ppm of PCP.

"Cricket Spring is located approximately 2,000 feet northwest of the Arkwood Site and is hydraulically downgradient from the site. It is a spring formed by a solution conduit (a crack or fissure enlarged by flowing groundwater) intersecting the land surface resulting in the discharge of groundwater. Samples of water flowing from the Cricket Spring, collected during 1985 and 1986, were reported to contain hazardous substances which may be related to the wood preserving industry in concentrations (expressed as parts per million) reflected in the following table:

<u>Sample Date</u>	<u>Hazardous Substance</u>	<u>Concentration</u>	
May 5, 1985	PCP	1.9	ppm
June 4, 1985	Toluene	0.0041	ppm
	Trichloroethylene	0.0019	ppm
	PCP	5.1	ppm
November 15, 1985	PCP	1.8	ppm
	Total PNA*	0.028	ppm
March 31, 1986	PCP	1.4	ppm
	Total PNA	0.016	ppm
June 24, 1986	Phenanthrene	0.008	ppm

\*PNA compounds are synonymous with polycyclic aromatic hydrocarbons (PAH compounds)

"The Cricket Spring discharges groundwater into a drainage ditch alongside a country road which flows a variable distance depending on prevailing climatic conditions. One sample of water collected by MMI from the drainage ditch approximately 600 feet downstream from Cricket Spring was reported to contain hazardous substances which may be related to the wood preserving industry in concentrations reflected in the following table:

<u>Sample Date</u>	<u>Hazardous Substance</u>	<u>Concentration</u>	
July 25, 1986	PCP	3.5	ppm
	acenaphthene	0.048	ppm
	fluorene	0.037	ppm
	phenanthrene	0.060	ppm
	anthracene	0.010	ppm
	di-n-butylphthalate	0.005	ppm
	fluoranthene	0.016	ppm
	pyrene	0.011	ppm
	benzo (a) anthracene	0.004	ppm
	bis-(2-ethylhexyl)phthalate	0.021	ppm
	chrysene	0.004	ppm
	benzo (b) fluoranthene	0.001	ppm
	benzo (k) fluoranthene	0.001	ppm

"Samples of water collected from several private water supply wells near the Arkwood Site during 1982 and 1986 have been reported to contain extremely low concentrations of some hazardous substances normally associated with the wood preserving industry. Two of these wells have been replaced by Mass Merchandisers, Inc. (MMI) a previous operator of the wood preserving operation at the Arkwood Site.

"The Arkwood Site is the only known wood preserving plant within approximately forty (40) miles of Cricket Spring. Therefore, the most likely source of the hazardous substances reported in the water samples collected from the Cricket Spring, the drainage ditch and the private water supply wells is the Arkwood Site.

"On September 18, 1985, EPA published notice of its proposal to add the Arkwood Site in Omaha, Arkansas to the National Priorities List (NPL) by proposing amendment to Appendix B of 40 CFR Part 300. A copy of the notice is attached as Exhibit 2.

"On May 15, 1986, EPA entered into an Administrative Order (AO) on Consent with MMI to undertake the preparation of a Remedial Investigation and Feasibility Study (RI/FS) of the Arkwood Site to establish the nature and extent of contamination at the site and to develop alternative clean-up methodologies for the site (Exhibit 3). The AO required that MMI first prepare a plan for the preparation of the complete RI/FS (RI/FS Work Plan). Within fifteen calendar days of receiving written approval of the RI/FS Work Plan, MMI was required to commence the work under the approved plan. EPA sent written approval of the RI/FS Work Plan to MMI on December 19, 1986. MMI was required to commence work on the RI/FS under the RI/FS Work Plan on January 12, 1987.

"One of the first tasks required under the RI/FS Work Plan is the intensive sampling and characterization of the site and the surface and groundwater quality in the area. This task will provide the basis for developing the remedial alternatives. The sampling activities needed to properly characterize the site include: soil boring and sampling; sampling stream sediments; surface waters and groundwater sources; installing on-site deep groundwater monitoring wells with subsequent periodic sampling; and air quality sampling. The sampling and site characterization activities were scheduled to begin under the RI/FS Work Plan (which has been incorporated

into the AO) on January 12, 1987. Intermittent site access for sampling and testing will be needed for a period of approximately eighty-one (81) weeks during the preparation of the RI/FS. On May 1, 1987, EPA entered into a First Amendment to Administrative Order on Consent with MMI designating MMI the representative of EPA pursuant to Section 104(e)(1) of CERCLA for the purpose of authorizing entry under Section 104(e)(3) and sampling under Section 104(e)(4) (Exhibit 4).

"Mr. Hallie C. Ormond, a past owner of the property, has appointed C. C. "Bud" Grisham his agent and attorney in fact in all matters related to the Arkwood site (Exhibit 5). Mr. Grisham granted limited access to MMI for the purpose of preparing the RI/FS Work Plan. The current owner of the site is Mary F. Burke, who is C.C. (Bud) Grisham's sister.

"On August 28, 1986, the Arkansas Department of Pollution Control and Ecology (ADPC & E) filed suit against Hallie C. Ormond, C.C. "Bud" Grisham Mary Jo Grisham, Arkwood, Inc., Mountain Enterprises, Inc., and MMI under the provisions of the Arkansas Water and Air Pollution Control Act (Ark. Stat. Ann. §82-1901 et seq.) and the Remedial Action Trust Fund Act (Ark. Stat. Ann. §82-4712 et seq.) seeking a permanent injunction to cease and abate further pollution and to undertake remedial action. Since the filing of the ADPC & E lawsuit, further access to the site has been denied MMI. Representatives of EPA have requested that Mr. Grisham grant access to MMI on several occasions, both orally and in writing, but Mr. Grisham has refused to grant such access. Although the deed for ownership of the site was transferred to Mary F. Burke on September 24, 1986, the Agency was not

informed of this transfer of ownership until May, 1987 and continued to pursue questions of access with Mr. Grisham, as agent for the landowner.

"On September 23, 1986, I spoke with Mr. Grisham on the telephone concerning access for MMI to the Arkwood Site. Mr. Grisham stated that he would probably be willing to grant limited, short-term access to MMI, but that full access to the site would only be granted if MMI agreed to make certain unspecified concessions concerning liability. I prepared a Record of Communication concerning this conversation a copy of which is provided as Exhibit 6.

"On September 29, 1986, Larry A. Wright, Chief of the Superfund Enforcement Section for EPA wrote a letter to Mr. Grisham urging him to reconsider his position concerning site access. A copy of this letter, taken from EPA's official files, is provided as Exhibit 7. Mr. Grisham has not responded to this letter.

"On October 21, 1986, I received a letter from Mr. Ivan Meyerson of the McKesson Corporation regarding MMI's inability to obtain long-term site access agreements from Mr. Grisham. Mr. Meyerson stated that Grisham 'could grant long-term site access only as part of an all-inclusive agreement between the potentially responsible parties at the Arkwood site. [and that] MMI has concluded in good faith that the current Grisham proposals for such an agreement cannot reasonably be accepted by MMI'. A copy of this letter is provided as Exhibit 8. Mr. Meyerson also indicated that all negotiations with Mr. Grisham for site access had completely stopped.

"On November 11, 1986, Jim Ingram, Assistant Regional Counsel, and I met

with Mr. Grisham and his attorney, Mr. Bill Doshier to discuss site access for MMI. During that meeting, Mr. Doshier stated that if he determined there was any chance that he could win a court case filed against him by the U.S. Department of Justice, he would not voluntarily grant a site access agreement to MMI. I prepared a meeting Memorandum concerning the discussions at this meeting and a copy of this document is provided as Exhibit 9. In a letter to Mr. Grisham's attorney, Bill Doshier dated December 8, 1986, Mr. Ingram stated that 'In light of your clients refusal to provide access to undertake the necessary investigation, it will be necessary for EPA to obtain access through the United States District Court unless voluntary assurance of access has been granted within one week of today'. A copy of this letter, taken from EPA's official files, is provided as Exhibit 10. To my knowledge, Mr. Grisham did not respond to this letter.

"On January 8, 1987, MMI informed EPA that it has still been unsuccessful in obtaining voluntary agreement on the part of Mr. Grisham to allow access for the preparation of the RI/FS. A copy of this letter, taken from EPA's official files, is provided as Exhibit 11. In its letter, MMI requested an extension of time for the preparation of the RI/FS equal to the time required to obtain site access. The start-up of field activities at the site has been delayed since that time by MMI's inability to obtain site access agreements from the landowner.



Further I say nothing.

Ruth Izraeli  
Ruth Izraeli

David A. Howard  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

My commission expires:

12/31/2011

**BOOKMARK**

